REMARKS

This is a response to the Notice of Non-Compliant Amendment (37 CFR 1.121) dated March 21, 2007 (the "Notice").

In the Notice, it was argued that a complete listing of all the claims was not present. Applicants believe that no claim listing was required in the amendment document as no claims were amended. Nevertheless, Applicants have provided a listing of the currently pending claims herein as a convenience.

It was further argued that no amendment (having Applicants' remarks/argument and claims) was included with the RCE filing. The filing of March 2, 2006 included PTO Form SB/30 with Box 1.a.ii. selected asking that the previously submitted Request for Reconsideration, filed on January 3, 2005, be entered. Nevertheless, Applicants have provided copies of the Request for Reconsideration and PTO Form SB/30 as a convenience.

This response has addressed fully all of the concerns expressed in the instant Notice of Non-Compliant Amendment and Applicants believe the pending claims are in condition for allowance. Early favorable action is urged. Should any further aspects of the application remain unresolved, Examiner is invited to telephone the Applicants' attorney at the number listed below.

Dated: April 23, 2007

Respectfully submitted,

By _____
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03-03-06

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RCE JAW

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Request For Continued Examination (RCE) Transmittal

Address to:
MS RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	09/788,281-Conf. #5298
Filing Date	February 16, 2001
First Named Inventor	Bryan D. Skene
Art Unit	2141
Examiner Name	K. D. Shingles
Attorney Docket Number	08204/100S025-US2/10.002C2

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.

Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application.

1. Submission required under 37 CFR 1.114 Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

   a. [X] Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

      i. [ ] Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____

      ii. [X] Other Request for Reconsideration filed 01/03/06

   b. [ ] Enclosed

      i. [ ] Amendment/Reply

      ii. [ ] Affidavit(s)/Declaration(s)

      iii. [ ] Information Disclosure Statement (IDS)

      iv. [ ] Other _____

2. Miscellaneous

   a. [ ] Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

   b. [X] Other Return Receipt Postcard; Certificate of Express Mailing; Fee Transmittal; One Month Request for Extension of Time

3. Fees The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

   a. [X] The Director is hereby authorized to charge ~~the following fees,~~ any underpayment of fees or credit any overpayments to Deposit Account No. 04-0100 . ~~I have enclosed a duplicate copy of this sheet.~~

      i. [ ] RCE fee required under 37 CFR 1.17(e)

      ii. [ ] Extension of time fee (37 CFR 1.136 and 1.17)

      iii. [ ] Other _____

   b. [X] Check in the amount of $ 910.00 enclosed

   c. [ ] Payment by credit card (Form PTO-2038 enclosed)

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Signature		Date	March 2, 2006
Name (Print/Type)	John W. Branch	Registration No.	41,633

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Docket No.: 08204/100S025-US2/10.002C2
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Bryan D. Skene et al.

Application No.: 09/788,281 Confirmation No.: 5298

Filed: February 16, 2001 Art Unit: 2141

For: METHOD AND SYSTEM FOR BALANCING LOAD DISTRIBUTION ON A WIDE AREA NETWORK Examiner: K. D. Shingles

REQUEST FOR RECONSIDERATION AFTER FINAL ACTION (37 C.F.R. SECTION 1.116)

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INTRODUCTORY COMMENTS

In response to the Office Action dated November 2, 2005, finally rejecting claims 2-5, 8, 9, 17-26, 29, 33-41 and 45-50, please reconsider the above-identified U.S. patent application.

Remarks/Arguments begin on page 2 of this paper.

REMARKS

Claims 2-5, 8, 9, 17-26, 29, 33-41, and 45-50 are currently pending in the application. The Final Office Action mailed on November 2, 2005, has rejected all of the pending claims. No new matter has been added by this request for reconsideration.

Rejection Under 35 U.S.C. § 103(a)

Claims 2-5, 22-24, 39, 40 and 49 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Lim (U.S. Patent No. 6,360,256) in view of Swildens et al. (U.S. Publication No. 2005/0228856, hereinafter Swildens).

In regard to independent Claim 2, the Final Office Action found that Lim teaches every element except for determining whether to delegate delivery of the resources to a content delivery network. Instead, the Final Office Action relied upon Swildens to disclose delegating delivery of resources from distributed computer servers to a content delivery network, wherein the load of the servers are taken into account when selecting for hosting. Consequently, the Final Office Action found independent Claim 2 to be obvious in view of the suggested combination of Lim and Swildens.

However, after a review of the cited text in the Swildens reference, it appears that the Final Office Action has incorrectly read a meaning into this citation that does not exist. Swildens appears to generally disclose a distributed on demand computing system (DODC) that integrates load balancing and provisioning functions similar to a content delivery network (CDN) with distributed computing functions. (See Page 2, Paragraph 0023). In particular, Swildens appears to disclose enabling an administrator to select one or more servers in a CDN that can be configured to either participate or not in the DODC. (See Page 5, paragraph 0084). Swildens also appears to suggest that the number of servers employed for the DODC versus the CDN can be automatically adjusted according to a demand for each type of server, not based on a particular request for resources. (See Page 1, paragraph 0017).

In contrast, independent Claim 2 teaches determining whether to provide requested resources from either a selected server at a resolved IP address in a zone whose network conditions

have been considered or delegating the delivery of the resources to a separate content delivery network that handles its own load balancing and provisioning functions of its servers. Clearly, nowhere in the Swildens reference is there a teaching or suggestion that in response to a request for resources, a determination is performed as to whether to delegate delivery of a requested resource to a content delivery network or provide the resources from a selected server.

It is well settled that a cited reference must be considered as a whole. Consequently, the Office Action can not just pick and choose particular elements from the Lim and Swildens references to find Claim 2 unpatentable. Thus, the suggested combination of Lim and Swildens does not make Claim 2 obvious, and it is now in condition for allowance.

Since independent Claims 22, 38, 49, and 50, are somewhat similar to independent Claim 2, these claims are also allowable for at least the same reasons.

Claims 8, 9, 17-21, 25, 26, 29, 33-38, 41, and 45-48 are rejected under 35 U.S.C. 1039a) as being unpatentable over Lim in view of Swildens, and further in view of Jindal et al. (U.S. Patent No. 6,092,178). Applicants respectfully disagree for at least the same reasons as the independent claims upon which these dependent claims depend, as discussed above. Thus, dependent Claims 8, 9, 17-21, 25, 26, 29, 33-38, 41, and 45-48 are patentable and allowable over the suggested combination of prior art references. Furthermore, dependent Claims 3-5, 23-24, and 40 are also patentable for at least the same reasons as the respective independent claims upon which they depend.

CONCLUSION

By the foregoing explanations, Applicants believe that this response has addressed fully all of the concerns expressed in the Final Office Action, and believes that it has placed each of the pending claims in condition for immediate allowance. Should any further aspects of the application remain unresolved, the Examiner is invited to telephone Applicants' attorney at the number listed below.

Dated: January 3, 2006

Respectfully submitted,

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